NO. 13014

In the United States Court of Appeals for the Ninth Circuit

HENRY T. TANIMURA, APPELLANT

vs.

UNITED STATES OF AMERICA, APPELLEE

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

BRIEF FOR APPELLEE

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STATEMENT OF JURISDICTION

Appellant, defendant below, appeals from a judgment entered April 16, 1951, by the United States District Court for the Northern District of California, Southern Division, granting appellee an injunction, directing restitution of rent overcharges in the amount of $5662.87 pursuant to Section 205(a) of the Emergency Price Control Act of 1942, as amended, (50 U.S.C.A. App. 925(a)) and Section 206(b) of the Housing and Rent Act of 1947, as amended (50 U.S.C.A. App. 1896(b)) and single damages in the amount of $1677.50 under Section 205 of said Act (50 U.S.C.A. App. 1895) (R. 30-32). Appellant charges that the lower court erred in denying him a jury trial and it is upon that issue that appellant relies upon this appeal (R. 43). Notice of appeal was filed June 14, 1951 (R 33). Jurisdiction of this Court is invoked pursuant to Title 28 United States Code Section 1291 (28 U.S.C. 1291).

COUNTER-STATEMENT OF CASE

The complaint was filed by the United States of America, appellee, February 28, 1950, against the appellant, Henry T. Tanimura and Charles S. Lee and Carol W. Lee,[1] charging the defendants with violation of the Emergency Price Control Act of 1942, as amended (50 U.S.C.A. App. 901 et seq.) [2], the Housing and Rent Act of 1947, as amended (50 U.S.C.A. App. 1881 et seq.),[3] and the Rent Regulations under said Acts (8 F.R. 7334; 12 F.R. 4302), by collecting rents in excess of the legal maximum for certain controlled rental housing accommodations identified as 1550 Fillmore Street, San Francisco, California (R. 3-9). In a schedule attached to the complaint plaintiff named the tenants alleged to have been overcharged, the rental accommodations occupied by them, the dates involved in their respective tenancies, the amount of rent collected, the legal maximum rent and the overcharges (R. 9). Plaintiff demanded an injunction against further violations of the Rent Act, restitution of all overcharges collected in violation of both Acts,[4] and treble damages for the overcharges within one year immediately preceding the institution of suit (R. 7-8).

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[1] No service was ever obtained upon defendants Charles S. Lee and Carol W. Lee since they were reported to have moved to Hawaii (R. 25) and the action was dismissed without prejudice as to said defendants (R. 26).

[2] Hereinafter frequently referred to as the "Price Control Act".

[3] Hereinafter frequently referred to as the "Rent Act".

[4] Contrary to appellant's contention (Br. 5) plaintiff-appellee did not move to dismiss the action insofar as it sought relief under the Price Control Act. The action was dismissed only as to defendants, Charles S. Lee and Carol W. Lee for lack of service as above indicated (R. 26).

In his answer appellant claimed that the complaint did not state a cause of action (R. 13); that no action could be maintained for alleged violation of the Price Control Act (R. 13); that the action was barred because of laches (R. 13-14); that the rental accommodations in question were hotel accommodations and thus not subject to rent control during the period of alleged violation under the Rent Act (R. 14-15); that the provisions of Section 205 of said Act are not retroactive beyond April 1, 1949 (R. 16); and that if any overcharges were received by appellee such violations were neither wilful nor the result of failure to take practicable precautions against the occurrence of such violations (R. 16).

Demand for jury trial was filed by appellant with his answer August 31, 1950 (R. 18-19), whereupon appellee moved to strike the jury demand and supported such motion with points and authorities (R. 19-23). The motion was heard and granted October 9, 1950 by the Honorable Michael J. Roche, District Judge (R. 25, 34-39). The demand was renewed on the day of trial and again denied (R. 40).

Following answers by appellant to the complaint, as amended, and to the request for admissions and interrogatories served by plaintiff, and answer by plaintiff to the request for admissions served by appellant, the case was tried February 9 and 12, 1951 before the Honorable Michael J. Roche, Judge, and after all evidence had been heard and given due consideration judgment was ordered for the plaintiff in the form of an injunction, restitution of overcharges on behalf of the tenants and costs but no statutory damages (R. 26). Plaintiff

thereupon filed a motion requesting the Court to reconsider its refusal to award damages (R. 26). This motion was heard on March 5 and 12, 1951, whereupon the Court modified its former judgment and also awarded plaintiff damages in the amount of the overcharges which had occurred within one year immediately preceding the institution of suit (R. 26). Findings of fact and conclusions of law were filed April 13, 1951 (R. 24-29) and judgment entered April 16, 1951 (R. 30-32). Restitution was decreed in favor of 21 tenants in the total amount of $5662.87, judgment for single damages in favor of the plaintiff in the amount of $1677.50, and an injunction restraining defendant from further violations of the Rent Act and ordering him to pay the costs in the case (R. 30-32). The only error charged on this appeal is the lower Court's denial of appellant's demand for a jury trial (R. 43).

STATUTES, CONSTITUTIONAL AMENDMENT, AND FEDERAL RULES OF CIVIL PROCEDURE HERE INVOLVED

All pertinent sections of the Emergency Price Control Act of 1942, as amended, and the Housing and Rent Act of 1947, as amended, together with the Seventh Amendment to the Constitution, and Rule 38(a) and (b) of the Federal Rules of Civil Procedure are set forth in the Appendix to this Brief (*infra,* pp. 17-19).

SUMMARY OF ARGUMENT

Since appellant conceded at the trial that he was not entitled to a jury trial on plaintiff's claim for restitution (R. 36), the sole question is whether appellant was entitled to a trial by jury on the claim for statutory damages under Section 205 of the Rent Act and if

denial thereof by the lower court constitutes reversible error in this case.

Appellee contends:

1. It was within the discretion of the trial court to try the equitable claims of the complaint first and its finding that violation existed was binding respecting the claim for liquidated damages. Hence, denial to appellant of a jury trial, even if he is entitled to one with respect to the claim for statutory damages, was harmless error since judgment was entered against appellant for single damages only.

2. An action by the United States to recover statutory damages under Section 205 of the Housing and Rent Act is not in the nature of a suit at common law and was unknown to the common law at the time of the adoption of the Seventh Amendment to the Constitution in 1791. Consequently, this was not an action in which there was a right to trial by jury.

Accordingly, the judgment should be affirmed.

ARGUMENT

I.

It was within the discretion of the trial court to try the equitable claims of the complaint first and its finding that violation existed was binding respecting the claim for liquidated damages. Hence, denial to appellant of a jury trial, even if he is entitled to one with respect to the claim for statutory damages was harmless error since judgment was entered against appellant for single damages only.

Appellant may only obtain a reversal of the judgment below upon the ground that he was unlawfully deprived of a trial by jury if he establishes that the denial of the jury trial affected substantial rights. As will be shown hereafter, appellant did not suffer any preju-

dice from the manner in which the trial was conducted nor in the denial by the trial judge of the demand for a jury trial.

The complaint in the instant case set forth three claims for relief. Count I set forth a claim for restitution pursuant to Section 205(a) of the Emergency Price Control Act of 1942 (R. 3-4). Count II set forth a claim for restitution and injunctive relief pursuant to Section 206(b) of the Housing and Rent Act of 1947, as amended (R. 4-5); and Count III set forth a claim for liquidated damages pursuant to Section 205 of the Housing and Rent Act of 1947, as amended (R. 6-7). As relief the prayer requested (1) an injunction against further violations; (2) an order of restitution pursuant to the Price Control Act of 1942 and the Housing and Rent Act of 1947; and (3) a judgment for liquidated damages pursuant to the Housing and Rent Act of 1947 (R. 7-8).

It was within the complete discretion of the trial court to try the equitable claims first and thereafter to try the claim for liquidated damages. This was made clear by the recent decision in *Orenstein* v. *United States,* F. 2d (C.A. 1) (Decided July 25, 1951 and not yet reported). In that case, Chief Judge Magruder, speaking for the Court said the following on this point:

> "However, the joinder of these two causes of action in a single complaint may have one important consequence in relation to the factual issues triable as of right before a jury. The issue whether the landlord in fact overcharged the tenant in violation of the regulation is common to the two causes of action. The order of trial is in the discretion of the district judge. Since the cause of action under Section 206(b) for injunction and restitu-

> tion is equitable in nature, the court in disposing of that claim is entitled to make findings of fact on the issues of violation and the amount of the overcharges without participation by a jury. Determinations of fact so made, if not 'clearly erroneous', are binding on the defendant, who is not entitled to relitigate such issues before a jury in the disposition of the cause of action for treble damages under Section 205. If the judge chooses to take this course, the only factual issues left to be tried by a jury as a matter of right in the treble damage action under Section 205 have to do with whether the violation, conclusively established by the findings of the court, was willful or 'the result of failure to take practicable precautions against the occurrence of the violation.' Unless the defendant sustains the burden of satisfying the jury that the violation was neither willful nor negligent, the United States is entitled as of right to judgment for damages equal to three times the amount of the overcharges. *Meyercheck* v. *Givens,* 186 F. 2d 85 (C.A. 7th, 1950)."

So here, too, it is reasonable to assume, in the absence of any evidence to the contrary, that the trial court concluded in the exercise of its discretion to try the equitable claims first. This presumption may be indulged in because this would have been the orderly method of trying the case since Counts I and II which asserted claims for restitution and injunctive relief preceded Count III which asserted a claim for liquidated damages. We have no right to assume that the Court would put the "cart before the horse". Moreover, every inference should be drawn to support the propriety of a ruling below upon appeal. (See *Boley* v. *Griswold,* 87 U. S. 486, 488; *Hardt* v. *Kirkpatrick,* 91 F. 2d 875 (C.A. 9); *Bakersfield Abstract Co.* v. *Buckley,* 100 F. 2d 530 (C.A. 9); *Aetna Insurance Co.* v. *Rhodes,* 170 F. 2d 111, 115 (C.A. 10)).

Further indication that the court tried the equitable counts first is evidenced by the fact that after trying the case, the record shows that the Court initially concluded that the plaintiff was only entitled to an injunction and restitution of overcharges on behalf of the tenants and costs but not entitled to damages (R. 26). Thus, at this point, it was clear that the appellant could claim no prejudice for being deprived of a jury trial with respect to the liquidated damage claims since no liquidated damages had been awarded to the plaintiff. See *Orenstein* v. *United States, supra.* Also, at this point it must be manifest that the Court had considered the claim for restitution and injunctive relief *before* considering the question as to the Government's right to liquidated damages. The record clearly shows that appellee moved the Court to reconsider its refusal to award damages *after* the Court had already indicated that solely restitution and an injunction would be ordered. It was only after a hearing upon plaintiff's motion for reconsideration of the Court's denial of damages that the Court modified its previous oral judgment and awarded plaintiff damages in single the amount of the overcharges which had occurred within one year immediately preceding the institution of this action (R. 26). The findings made upon the Court's consideration of violation respecting the restitution claim were binding upon appellant on the statutory damage claim since he was "not entitled to relitigate such issues before a jury in the disposition of the cause of action for treble damages under Section 205". *Orenstein* v. *United States, supra.* The only question open to the jury at this point was whether appellant's

violation was wilfull or negligent as to authorize the Court to grant treble or single the amount of the overcharge. *Orenstein* v. *United States, supra.* Thus, at this point, too, it would appear that the appellant suffered no prejudice by a denial of the trial by jury since by awarding single damages only, the Court must have found an absence of wilfulness in the violation,[5] which was the only issue for a jury to decide. Therefore, "even if the denial of a jury trial was wrong, it was harmless error for there was no issue of fact to submit to a jury." (*Forster* v. *Insurance Co. of North America,* 139 F. 2d 875 (C.A. 2)). At least it cannot be said that appellant would have been any better off if this issue had been submitted to a jury and if its verdict of freedom from wilfulness had been rendered in his favor. The trial court had already rendered a ruling as favorable to appellant on this issue as any jury could have reached.

II

An action by the United States to recover statutory damages under Section 205 of the Housing and Rent Act is not in the nature of a suit at common law and was unknown to the common law at the time of the adoption of the Seventh Amendment to the Constitution in 1791. Consequently this was not an action in which there was a right to trial by jury.

There is no merit to the contention that appellant's constitutional rights to a trial by jury were violated in any event. The Seventh Amendment to the Constitu-

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[5] Treble damages are mandatory unless the defendant sustains the burden of proving that the violation was neither wilful nor the result of failure to take practicable precautions in which event single damages must be awarded. (*Orenstein* v. *United States, supra; Meyercheck* v. *Givens,* 186 F. 2d 85 (C.A. 7)).

tion restricts the right of trial by jury "in suits at common law", and Rule 38 of the Federal Rules of Civil Procedure (28 U.S.C.A. foll. 723c) preserves such right to jury trial "as declared by the Seventh Amendment or as given by a statute of the United States." The Government's right of action for restitution and liquidated damages for rental overcharges is primarily a special right of action created by statute and not a suit at common law. The decision of the Supreme Court in *National Labor Relations Board* v. *Jones and Laughlin Steel Corp.*, 301 U. S. 1, 48 and *Block* v. *Hirsh*, 256 U. S. 135, 158, are, therefore, controlling.

In *Labor Board* v. *Jones and Laughlin, supra,* the Board, pursuant to Section 10(c) of the National Labor Relations Act of 1935, not only ordered reinstatement of employees wrongfully discharged but likewise directed the payment of wages for the time lost by the discharge, less amounts earned by the employees during that period. Respondent argued that this order was equivalent to a money judgment and, therefore, violated the guaranty of the Seventh Amendment to a trial by jury. Rejecting this claim, the Supreme Court said (301 U. S. at p. 48):

> "The Amendment thus preserves the right which existed under the common law when the Amendment was adopted. *Shields* v. *Thomas,* 18 How. 253, 262; *In re Wood,* 210 U.S. 246, 258; *Dimick* v. *Schiedt,* 293 U.S. 474, 476; *Baltimore & Carolina Line* v. *Redman,* 295 U.S. 654, 657. Thus it has no application to cases where recovery of money damages is an incident to equitable relief even though damages might have been recovered in an action at law. *Clarke* v. *Wooster,* 119 U. S. 322, 325;

> *Pease* v. *Rathbun-Jones Engineering Co.,* 243 U. S. 273, 279. It does not apply where the proceeding is not in the nature of a suit at common law. *Guthrie National Bank* v. *Guthrie,* 173 U. S. 528, 537.
>
> The instant case is not a suit at common law or in the nature of such a suit. The proceeding is one unknown to the common law. It is a statutory proceeding. Reinstatement of the employee and payment for time lost are requirements imposed for violation of the statute and are remedies appropriate to its enforcement. The contention under the Seventh Amendment is without merit."

While the Court declared that "Thus it [the Seventh Amendment] has no application to cases where recovery of money damages is an incident to equitable relief even though damages might have been recovered in an action at law", this does not mean that if recovery of money damages is separate and distinct from the claim for equitable relief, the Seventh Amendment applies. The sentence used in its context is merely illustrative of the cases in which the Seventh Amendment has no application. Reasonably read in its context, it was not intended to be exclusively used as shown by the next sentence that the Seventh Amendment "does not apply where the proceeding is not in the nature of a suit at common law. *Guthrie National Bank* v. *Guthrie,* 173 U. S. 528, 537."

In the *Guthrie* case the claim asserted was a legal claim wholly unconnected and separate from any equitable relief. It was a claim against a municipal corporation based upon scrip, warrants or other evidence of indebtedness issued by the municipality. Yet in the *Guthrie* case, the Supreme Court said (173 U.S. at p. 537):

> "There is no force to the objection that in ascertaining the facts provision must be made for a trial by jury, if demanded, or else that the Seventh Amendment to the Constitution of the United States is violated, which provides that 'in suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved.'
>
> This act does not infringe upon that amendment. The proceeding under it is not in the nature of a suit at common law, * * *".

Thus, it is apparent from both the *Jones and Laughlin* and *Guthrie* cases the sole test is whether "the proceeding was one unknown to the common law", and whether "it is a statutory proceeding" (See, *Labor Board* v. *Jones and Laughlin,* supra, 301 U.S. at p. 48). If it is a statutory proceeding and if the remedy is imposed "for violation of the statute and are remedies appropriate to its enforcement", the Seventh Amendment does not apply. This same view was expressed more recently in *National Labor Relations Board* v. *Williamson-Dickie Manufacturing Co.,* 130 F. 2d 260 (C.A. 5), where the Court in speaking of a reparation order under the National Labor Relations Act said (at p. 263):

> "The proceeding is not, it cannot be made, a private one to enforce a private right. It is a public procedure looking only to public ends."

As in the *Jones & Laughlin* and *Williamson-Dickie Manufacturing Co.* cases, so here, too, the action is a statutory action by the Government to vindicate the public interest. It is not a private suit to enforce a private right. The remedy for statutory damages is imposed as in *Jones & Laughlin* "for violation of the

statute" and is merely "appropriate for its enforcement" (301 U.S. at p. 48). It is a statutory proceeding wholly unknown to the common law which confers upon the Government a right which never existed and which was never asserted at common law, and hence the Seventh Amendment cannot be said to apply.

The principles announced in *Labor Board* v. *Jones & Laughlin* have been applied by many District Courts in striking demands for juries in statutory damage actions under the Emergency Price Control Act and the Housing and Rent Act of 1947.

Reported decisions are *United States* v. *Shaughnessy,* 86 F. Supp. 175 (D. Mass.); *Creedon* v. *Arielly,* 8 F.R.D. 265 (W.D. N.Y.); *United States* v. *Friedman, Rule, Pitman,* 89 F. Supp. 957 (S.D. Iowa).

Unreported decisions include: *Woods* v. *Endekay Realty Corp.,* Civil Action 44-302 (S.D. N.Y.), Ryan, J.; *United States* v. *Osipoff, Gibson,* Civil Action 1106 (S.D. Cal.), Metzger, J., decided August 8, 1949; *United States* v. *Stein,* Civil Action 3412 (M.D. Pa.), Follmer, J., decided February 20, 1950; *United States* v. *Cherico,* Civil Action 7848 (M.D. Pa.), Follmer, J., decided December 5, 1949; *United States* v. *Caldwell,* Civil Action 4387 (W.D. N.Y.), Knight, J., decided January 23, 1950; *United States* v. *Ullrich,* Civil Action 5230 (D. Md.), decided April 13, 1951; *United States* v. *Sicherer,* Civil Action 805 (D. Nev.), decided April 19, 1950; *United States* v. *Kennedy,* Civil Action 803 (D. Nev.), decided April 19, 1950; *United States* v. *Hall,* Civil Action 998 (W.D. N.C.), Warlick, J., decided April 25, 1950; *United States* v. *Kenter,* Civil Action 2922 (N.D. Cal.), *United States* v. *Barrett,* Civil

Action 9749 (E.D. Pa.), Ganey, J., decided June 21, 1950; *United States* v. *Winchester,* Civil Action 1432 (W.D. Mich.), Starr, J., decided August 14, 1950; *United States* v. *Siegel,* Civil Action 2532 (D. La.), Wright, J., decided September 27, 1950. Contra: *Orenstein* v. *United States, supra; United States* v. *Strymish,* 86 F. Supp. 999 (D. Mass.); *United States* v. *Hart,* 86 F. Supp. 787 (E.D. Va.); *United States* v. *Friedland,* 94 F. Supp. 721 (D. Conn.); *United States* v. *Jepson,* 90 F. Supp. 983 (D. N.J.).

As the Court said in *United States* v. *Friedman, Rule, Pitman, supra,* which involved three actions under the Housing and Rent Act (at page 961):

> "Certainly, it could not be successfully argued here that these actions brought as they have been in pursuance of Section 205 of the Housing and Rent Act of 1947, as amended, for treble damages, is a suit at common law. Rather the treble damage feature of these actions is in its entirety a creature of the statute and by no stretch of the imagination existed at the common law, and defendants' contentions thereon are wholly untenable."

Also in *Creedon* v. *Arielly, supra,* in an action for treble damages under the Price Control Act, Judge Knight said (p. 268):

> "* * * although defendant has moved for a jury trial of this action, the constitutional right to a jury trial is not applicable to this case. Amendment VII of the United States Constitution grants the right of trial by jury 'in suits at common law.' It does not apply to an action under the Emergency Price Control Act of 1942. 'It is only to rights and remedies as they were generally known and enforced at common law by jury trial that the

amendment applies'. *Agwilines, Inc.* v. *National Labor Relations Board,* 5 Cir., 87 F. 2d 146, 150."

The same principle has been applied in other actions to which the Government has been a party. See *Galloway* v. *United States,* 319 U.S. 372; *Simmons* v. *United States,* 29 F. Supp. 285 (W. D. Ky.). See, too, *Bellavance* v. *Plastic-Craft Novelty Co.,* 30 F. Supp. 37 (D. Mass.).

With these principles and authorities in mind, a case such as *Bruckman* v. *Hollzer,* 152 F. 2d 730 (C.A. 9) is clearly distinguishable. In the *Bruckman* case a private party sought to enforce a private right. There was not present as here, a situation where the Government was attempting to protect the public interest by invoking a statutory remedy appropriate for enforcing a statute. So, too, cases such as *United States* v. *Hepner,* 213 U.S. 103, are distinguishable since they involve actions to enforce a *penalty,* whereas the instant action is one for "liquidated" damages (See *Kessler* v. *Fleming,,* 163 F. 2d 464, 468 (C.A. 9); *Culver* v. *Bell & Loffland,* 146 F. 2d 29 (C.A. 9); *Amato* v. *Porter,* 157 F. 2d 719 (C.A. 10); *Woods* v. *Robb,* 171 F. 2d 539 (C.A. 5).

As said in the *Robb* case, *supra,* "The suit involves only civil sanctions, imposed as deterrents rather than punishment" (171 F. 2d at p. 541). "Multiple exemplary damages whose allowance depends upon the recovery of actual damages, have never, so far as we are aware been regarded as amounting to a criminal penalty"(*Kessler* v. *Fleming, supra,* 163 F. 2d at p. 468, Judge Healy speaking for this Court).

CONCLUSION

In view of the above authorities, therefore, it is respectfully submitted that this appeal should be dismissed and the judgment below affirmed.

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APPENDIX

Emergency Price Control Act of 1942, as amended (50 U.S.C.A. App. 901, et seq.):

> Section 1(b) The provisions of this Act, and all regulations, orders, price schedules, and requirements thereunder, shall terminate on June 30, 1947, or upon the date of a proclamation by the President, or upon the date specified in a concurrent resolution by the two Houses of the Congress, declaring that the further continuance of the authority granted by this Act is not necessary in the interest of the national defense and security, whichever date is the earlier; except that as to offenses committed, or rights or liabilities incurred, prior to such termination date, the provisions of this Act and such regulations, orders, price schedules, and requirements shall be treated as still remaining in force for the purpose of sustaining any proper suit, action, or prosecution with respect to any such right, liability, or offense.
>
> Sec. 205.(a) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of section 4 of this Act, he may make application to the appropriate court for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing by the Administrator that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Housing and Rent Act of 1947, as amended (50 U.S.C.A. App. 1881, et seq.):

> Sec. 205. Any person who demands, accepts, or receives any payment of rent in excess of the maximum rent prescribed under section 204 shall be liable to the person from whom he demands, accepts, or receives such payment (or shall be liable

to the United States as hereinafter provided), for reasonable attorney's fees and costs as determined by the court, plus liquidated damages in the amounts of (1) $50, or (2) three times the amount by which the payment or payments demanded, accepted, or received exceed the maximum rent which could lawfully be demanded, accepted, or received, whichever in either case may be the greater amount: *Provided,* That the amount of such liquidated damages shall be the amount of the overcharge or overcharges if the defendant proves that the violation was neither willful nor the result of failure to take practicable precautions against the occurrence of the violation. Suit to recover such amount may be brought in any Federal, State, or Territorial court of competent jurisdiction within one year after the date of such violation: *Provided,* That if the person from whom such payment is demanded, accepted, or received either fails to institute an action under this section within thirty days from the date of the occurrence of the violation or is not entitled for any reason to bring the action, the United States may institute such action within such one-year period. If such action is instituted, the person from whom such payment is demanded, accepted, or received shall thereafter be barred from bringing an action for the same violation or violations. For the purpose of determining the amount of liquidated damages to be awarded to the plaintiff in an action brought under this section, all violations alleged in such action which were committed by the defendant with respect to the plaintiff prior to the bringing of action shall be deemed to constistute one violation, and the amount demanded, accepted, or received in connection with such one violation shall be deemed to be the aggregate amount demanded, accepted, or received in connection with all violations. A judgment in an action under this section shall be a bar to a recovery under this section in any other action against the same defendant on account of any violation with respect to the same person prior to the institution of the action in which such judgment was rendered.

Sec. 206.(b) Whenever in the judgment of the Housing Expediter any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of any provision of this Act, or any regulation or order issued thereunder, the United States may make application to any Federal, State, or Territorial court of competent jurisdiction for an order enjoining such acts or practices, or for an order enforcing compliance with such provision, and upon a showing that such person has engaged or is about to engage in any such acts or practices a permanent or temporary injunction, restraining order, or other order shall be granted without bond.

Federal Rules of Civil Procedure (28 U.S.C.A. foll. 723c):

Rule 38(a) *Right Preserved.* The right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States shall be preserved to the parties inviolate.

(b) *Demand.* Any party may demand a trial by jury of any issue triable of right by a jury by serving upon the other parties a demand therefor in writing at any time after the commencement of the action and not later than 10 days after the service of the last pleading directed to such issue. Such demand may be indorsed upon a pleading of the party.

Seventh Amendment to the Constitution:

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.

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